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|--------------------------------|-------------|----------------------|---------------------|------------------|
| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
| 10/509,429 | 09/24/2004 | Ludovic Noirie | Q82799 | 3427 |
| 23373 | 7590 | 03/18/2008 | EXAMINER | |
| SUGHTRUE MION, PLLC | | | STAHL, MICHAEL J | |
| 2100 PENNSYLVANIA AVENUE, N.W. | | | | |
| SUITE 800 | | | ART UNIT | PAPER NUMBER |
| WASHINGTON, DC 20037 | | | 2874 | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

| | | |
|------------------------|---------------------|--|
| Application No. | Applicant(s) | |
| 10/509,429 | NOIRIE ET AL. | |
| Examiner | Art Unit | |
| MICHAEL STAHL | 2874 | |

—The MAILING DATE of this communication appears on the cover sheet with the correspondence address —

THE REPLY FILED **28 February 2008** FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) The period for reply expires **3** months from the mailing date of the final rejection.
 b) The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
 Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) They raise the issue of new matter (see NOTE below);
 (c) They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. Applicant's reply has overcome the following rejection(s): _____.

6. Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. For purposes of appeal, the proposed amendment(s): a) will not be entered, or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: **16**.

Claim(s) objected to: **5-9 and 13-15**.

Claim(s) rejected: **1-4 and 10-12**.

Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fail to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
 See Continuation Sheet

12. Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.

13. Other: _____.

/Mike Stahl/
571-272-2360

/Sung H. Pak/
Primary Examiner, Art Unit 2874

Continuation of 11. does NOT place the application in condition for allowance because: The proposed amendment to claim 1 is redundant because claim 1 had already recited that the space switching modules are non-broadcasting (line 9). This limitation was in claim 1 as originally filed and none of the previous rejections were alleged to be deficient with regard to this limitation. Nevertheless, it is noted that the space switching modules in Shiragaki as interpreted in the most recent rejection are non-broadcasting because each space switching module is not connected to all the output ports of the space cross-connect unit.

The remarks also argue against the position of inherency taken in the rejection with regard to the ability of the Shiragaki device to perform packet switching as well as circuit switching, and request that the examiner provide further support of the conclusion of inherency. However, the examiner believes that the rejection has already met the requirements of MPEP 2112.01(l): "Where the claimed and prior art products are identical or substantially identical in structure or composition, or are produced by identical or substantially identical processes, a prima facie case of either anticipation or obviousness has been established. When the PTO shows a sound basis for believing that the products of the applicant and the prior art are the same, the applicant has the burden of showing that they are not. Therefore, the prima facie case can be rebutted by evidence showing that the prior art products do not necessarily possess the characteristics of the claimed product" (all citations omitted). As pointed out in the rejection, the Shiragaki device as interpreted in the rejection has exactly the same structure as defined in claim 1. This forms the "sound basis for believing that the products of the applicant and the prior art are the same". This could potentially be rebutted by evidence showing that the Shiragaki device does not necessarily possess the recited characteristics. However, the remarks merely allege that it is not necessarily true that the SCCU of Shiragaki can perform packet switching as well as circuit switching. This is not evidence.

Lastly the remarks allege with regard to claim 2 that Shiragaki does not disclose exactly N dividers and C modules. However, the final rejection explained in detail how the various parts of Shiragaki are being interpreted. One more attempt at explaining will be made here. Each signal divider has n outputs (col. 11 lns. 13-14; they are 1:n splitters). Each output from a single signal divider goes to a different switching module, hence there are n switching modules. What claim 1 calls C (the number of outputs of each signal divider), the reference calls n. Thus there are C switching modules in Shiragaki fig. 5 as interpreted in the rejection.